



Regulatory Comment: Statutory Liens

THE ISSUE:

On February 25, 2026, the National Credit Union Administration (NCUA) Board issued a [notice of proposed rulemaking](#) regarding a proposal to remove a provision of NCUA regulations regarding federal credit unions' (FCUs) statutory lien authority.

IMPACT TO CREDIT UNIONS:

The proposed deletion would have no substantive effect on FCU lien authority or obligations. The proposed rule would remove potentially confusing language from the NCUA's regulation implementing statutory lien authority that reminds FCUs to consider federal, state, and case law when considering whether the regulation is preempted.

KEY POINTS:

- The Board proposes to delete the definition of “except as otherwise provided by law or except as otherwise provided by federal law.”
- The Board argues that the language is redundant and believes that FCUs should understand that a law that preempts this regulation is ultimately controlling.
- The proposed rule does not alter the scope of FCU statutory lien authority under the Federal Credit Union (FCU Act). FCUs are still responsible for determining which laws and regulations apply to their operations.

QUESTIONS TO CONSIDER:

1. Do you believe the phrase “except as otherwise provided by law or except as otherwise provided by federal law” is redundant in § 701.39 of the NCUA's regulations? Why or why not?
2. Is there a significant risk that removing this language will cause credit unions to misinterpret the regulation as expanding preemption of state law?
3. Should the provision be eliminated entirely or reworded for clarity regarding an FCU's application of statute or case law?

ACTION NEEDED: Deadlines and contacts

Please use the comment link below to respond to America's Credit Unions' survey. This will help shape the discussion and better address your needs in our comment letters.

- Comments due to America's Credit Unions: April 13, 2026 — [**Submit here.**](#)
- Comments due to NCUA: April 27, 2026
- Questions? Contact [Kristin Rheins](#), Regulatory Advocacy Counsel, America's Credit Unions
- Agency contact: Gira Bose, Senior Staff Attorney, Office of General Counsel, at (703) 518-6540

BACKGROUND:

Section § 701.39 of the NCUA's regulations implements the statutory lien authority granted to FCUs under the Federal Credit Union Act (FCU Act). The regulation states that an FCU has the authority to impress and enforce a lien against a member's shares and dividends to satisfy any outstanding financial obligation owed to the credit union.

Section 701.39(a)(1) implies the possibility of bypassing federal and/or state requirements and reminds credit unions of their responsibility to assess whether such statutory or case law exists and is applicable.

Proposed in 1998, the original text of § 701.39 provides an express provision that would have preempted state laws governing the right of a creditor to impress and enforce a lien, as well as the common law right of set-off. Commenters argued that the proposed language was too broad, ignoring that some state laws may benefit credit unions.

To appease commenters, the NCUA's final rule removed the blanket preemption provision and replaced it with the following language: "except as otherwise provided by law or except as otherwise provided by federal law." The Board no longer believes this definition is helpful.

SECTION-BY-SECTION ANALYSIS:

The Board proposes to amend § 701.39(a)(1) to remove the definition of the term "except as otherwise provided by law or except as otherwise provided by federal law." As currently defined,

this term serves as a reminder that FCU statutory lien authority under the regulation may be limited by applicable federal or state statute or case law. The Board believes that the fact that an FCU must determine relevant laws and requirements is self-evident and does not need to be underscored by the regulation.